

Exhibit 34

STATE OF WISCONSIN : CIRCUIT COURT : MANITOWOC COUNTY
BRANCH 1

STATE OF WISCONSIN,

PLAINTIFF,

JURY TRIAL

TRIAL - DAY 23

vs.

Case No. 05 CF 381

STEVEN A. AVERY,

DEFENDANT.

DATE: MARCH 14, 2007

BEFORE: Hon. Patrick L. Willis
Circuit Court Judge

APPEARANCES: KENNETH R. KRATZ
Special Prosecutor
On behalf of the State of Wisconsin.

THOMAS J. FALLON
Special Prosecutor
On behalf of the State of Wisconsin.

NORMAN A. GAHN
Special Prosecutor
On behalf of the State of Wisconsin.

DEAN A. STRANG
Attorney at Law
On behalf of the Defendant.

JEROME F. BUTING
Attorney at Law
On behalf of the Defendant.

STEVEN A. AVERY
Defendant
Appeared in person.

TRANSCRIPT OF PROCEEDINGS

Reported by Diane Tesheneck, RPR

Official Court Reporter

1 2:25 and see how you are doing.

2 (Recess taken.)

3 (Jury present.)

4 THE COURT: Mr. Buting, at this time you
5 may begin the defense closing.

6 ATTORNEY BUTING: Thank you, Judge. Good
7 afternoon, ladies and gentlemen. This is the first
8 time I have actually had a chance to talk to you. I
9 have sort of been talking at you as we walk by the
10 witnesses for 6, 5 weeks, whatever. And I'm
11 really -- I feel honored and privileged to do so,
12 just as I am honored and privileged to defend
13 Mr. Steven Avery here, in this very, very serious
14 case.

15 Let me make one thing very clear, right
16 here at the outset. We do not and have never
17 claimed that the police killed Teresa Halbach.
18 But in that respect they have that in common with
19 Steven Avery. However, the person or persons who
20 did kill Teresa, knew exactly who the police
21 would really want to blame for this crime.

22 And they were aided in that respect, by
23 widespread media publicity as early as Friday
24 morning, November 4th, the very morning after the
25 day she was first reported. Widespread publicity

1 that identified Mr. Steven Avery as one of the
2 last people known to have seen her. And because
3 of who he is, that drew even more media attention
4 than perhaps it might other wise have. And the
5 focus was on Mr. Avery, rather than one of the
6 other customers that she saw that day.

7 And this was the very same Steven Avery
8 who was suing the Manitowoc County and the
9 Sheriff's Department, with a lawsuit asking for a
10 whole lot of money, for the wrongful conviction
11 and all the years in prison that he spent, from a
12 1985 wrongful conviction.

13 I believe that when the Manitowoc
14 officers saw this, they very badly wanted to
15 believe that he was guilty and that this was
16 their way out. And that from that point forward,
17 that they had this investigative bias, focused on
18 Steven Avery, that was, then, skillfully
19 exploited by the real perpetrator of this crime.

20 Now, from the very beginning, Steven
21 Avery has proclaimed his innocence in this case.
22 He told that -- everybody that had a camera,
23 anybody who talked to him, that he was not
24 guilty, and that he was being framed. That the
25 police planted his blood.

1 And I want you to think for just a
2 moment how difficult a situation you would be in
3 if that had occurred to you. How, after all of
4 this evidence comes out, and police, who better
5 than anyone else would know how to plant
6 evidence, how you would get back the presumption
7 of innocence. How do you go about trying to get
8 the community, and ultimately a jury such as you,
9 to believe in our system of justice, to believe
10 that in America you are presumed innocent, unless
11 the State, which has the entire burden of proof,
12 can prove you guilty, beyond a reasonable doubt.

13 What would you do? Remember, this
14 morning and five weeks ago, you promised that you
15 would do that, despite all of the pre-trial
16 publicity you may have been exposed to and may or
17 may not have retained. You promised each of us
18 and the Court, and the Judge instructed you
19 today, that you must presume Mr. Avery innocent,
20 and that you must hold the State to the burden of
21 proof, beyond a reasonable doubt. We will talk a
22 little bit more about that later, but I want you
23 to keep that in mind. Because as you go through
24 this evidence, you have to apply that, because
25 that is your sworn duty.

1 Now, we have offered a theory of
2 defense. And that's what it is, it's a theory.
3 Because if someone frames you, you are obviously
4 not there to see how, exactly, it happened;
5 where, how, when, the kinds of things that
6 Mr. Kratz is going to argue we haven't presented.
7 There is no videotape showing how this was done.
8 There's no cop who, in a *Perry Mason* moment,
9 breaks down on the witness stand and says, yes, I
10 did it, I did it, you got me. This is real life,
11 that doesn't happen.

12 You are entitled to reasonable
13 inferences, however, and we're entitled to the
14 inferences that can be drawn from circumstantial
15 evidence, just as much as they are. And so you
16 ask yourself, what would it look like, what would
17 it look like, what would a case look like if
18 somebody was being framed.

19 And we're going to do that for a little
20 bit now. And I think when you do, you are going
21 to see that it would look a lot like this case.
22 You would look first and you would see, well,
23 what about the lack of evidence, in areas that
24 you would expect there to be evidence. And,
25 then, you would look at the areas where there

1 appears to be evidence linking the person to the
2 crime and ask yourself why does all of that
3 evidence appear suspicious or unreliable.

4 And we're going to go back and forth on
5 that a little bit, but those are the two main
6 areas I want to talk about first. Evidence
7 that's not there, that should be. And evidence
8 that is there that appears suspicious or
9 unexplained. And let me turn to that first.

10 In fact, let me turn to what probably
11 is, at least on its face, the most damning piece
12 of evidence in this case, and that is, Teresa
13 Halbach's remains, found in the burn pit, outside
14 Mr. Avery's garage, trailer, whatever.

15 We'll look at the -- what the evidence
16 shows first. We know that not all of her remains
17 have ever been found. I believe Dr. Eisenberg
18 said only 40 percent of her skeletal remains.
19 We're not talking the rest, obviously, that you
20 would expect might be gone, but skeletal remains,
21 only 40 percent. Not because the other 60
22 percent gets burned up. No expert has ever come
23 into this court and said fire would consume bone
24 completely.

25 What fire does, according to these

1 experts, is it goes through these phases of
2 charred to ultimately calcined -- calcinated, I
3 believe the word was. Sixty percent of it is
4 missing. All right. That's -- That's peculiar
5 to begin with. But, then --

6 Well, before I move off that, there's
7 something else that's missing and that is,
8 Mr. Kratz points out, well, the jeans, we found
9 these rivets in this pair of jeans here. But
10 they only found five of six, assuming that these
11 are the same jeans, and these are just a
12 representative example. But what did they not
13 find, the biggest item of all, the button that
14 closes the waist.

15 They have got magnets they are using
16 through all this dirt. They are the sifting
17 through every thing and they don't find this
18 button anywhere. They don't find her house keys
19 anywhere, her work keys anywhere. They find one
20 single key, which we'll certainly talk about.

21 But most importantly, all the experts
22 agree, these bones were moved. And I have got to
23 tell you, we have been here, now, for five weeks
24 and we have still not heard any explanation from
25 this side about how that happens.

1 In fact, we haven't heard any
2 explanation about a lot of things. We have heard
3 manner and cause of death, but that's not really
4 how Teresa Halbach was killed, or even where
5 Teresa Halbach was killed.

6 Unfortunately, from my standpoint on
7 this point anyway, the State gets to go last.
8 This is called sandbagging. This is where we
9 don't get to respond to the theory or the
10 argument that they have been harboring all this
11 time and haven't told you folks either. So they
12 are going to get up here after Mr. Strang and I
13 are done and they are going to say, hey, this is
14 the explanation, take our word for it. And we
15 don't -- of course, don't have a chance to
16 respond.

17 Well, I'm going to trust that between
18 the 12 of you, ultimately 12, you will be able to
19 answer those questions that they raise. You will
20 be able to pick apart, as well as I can, whatever
21 theory they come up with, because we have not
22 heard any yet.

23 The bones were moved. The question is,
24 were they moved to Mr. Avery's burn pit, or were
25 they moved from Mr. Avery's burn pit. The State

1 would have you believe that the original site of
2 burning was the burn pit, behind his garage. But
3 they have offered no explanation for why bones,
4 human bones, would be found in the Janda burn
5 barrel, some 150 feet, or whatever it is, away,
6 in the other yard.

7 And Dr. Eisenberg told you -- By the
8 way -- I can't believe I forgot this -- there's a
9 third site. There's actually three different
10 sites where human, or possible suspected human
11 bones were found. Clearly identified human bones
12 were found in the burn pit. And clearly
13 undisputed human bones were found in the burn
14 barrel.

15 But there's also this mysterious quarry
16 site, a quarter mile or so away that -- You will
17 have to forgive me, but I'm not as
18 technologically savvy as Mr. Kratz, and so we're
19 going to be using the ELMO instead of a laptop.
20 But this is -- this is the map that was shown to
21 you. This is the diagram that was created by
22 Mr. Austin, with the assistance of Dr. Eisenberg.

23 This flag down here, is the third site,
24 where pelvic bones were found, according to
25 Dr. Eisenberg. They were sent to the FBI to do

1 mito-typing (phonetic). We did a stipulation
2 that nothing could be determined from them. But
3 what she said was, all three locations where
4 bones were found, or possible human bones in the
5 case of the quarry, were all burned to the same
6 degree, same amount of calcination.

7 So there is a similarity here that
8 continues forward through all of them. And, very
9 important, no evidence of more than one body. I
10 don't even know if there are other bodies missing
11 in Manitowoc County, or people missing, but in
12 this instance, Dr. Eisenberg concluded, and
13 Dr. Fairgrieve agreed, no evidence of more than
14 one body. So we have got these bones in three
15 different locations.

16 Now, curiously, you have never seen a
17 photograph of what this site looks like, or what
18 the bones looked like, and neither have I. And
19 neither has, I assume, any of the prosecution
20 team because, for some curious reason, no
21 photographs were taken of that site.

22 The method of recovery in this case was
23 not skillfully done, as Mr. Kratz tried to argue,
24 by these experienced arson experts. This
25 investigation needed a forensic anthropologist to

1 be called to that scene, before anything was
2 touched. And Dr. Fairgrieve explained why.

3 Dr. Eisenberg admitted that by the time
4 she got the bones, she was unable to determine
5 some important information about its location,
6 how it was sited. And not only was nobody called
7 to the scene, but no photographs.

8 Have you seen one photograph of any of
9 those bones in the burn pit, in this location,
10 before it's picked up? One photograph? No, you
11 see boxes of bones, tables where they are thrown
12 out. You don't see them in their site. And
13 Dr. Fairgrieve explained to you why that's
14 important, especially important, if you're going
15 to try and answer the question of, was that the
16 burn site.

17 Dr. Fairgrieve is probably the expert in
18 the world, or at least in this North America, on
19 the forensic identification and interpretation of
20 cremains, much more experienced than
21 Dr. Eisenberg in this area. I don't have a
22 problem with Dr. Eisenberg; she's a fine person,
23 and a fine anthropologist.

24 But Dr. Fairgrieve has much more
25 experience in the field, dealing with cremains.

1 He's written a book that's coming out soon. He's
2 worked for the Crown all of his life. This is
3 the first case he's ever testified for the
4 defense. So this is not some paid defense expert
5 that we have just brought in here to try and --
6 try and do a smoke screen or something.

7 This is a world renown expert. And what
8 he says is, he's had a lot of cases, or he's been
9 called in and that very question has been
10 presented, the bones were moved, where is the
11 original site. Was it over here, or was it where
12 the bones were found.

13 Dr. Eisenberg says, you have to listen
14 carefully to her opinion, she concluded -- First
15 of all, she could not rule out other possible
16 burn sites, but her opinion was that it was most
17 likely the original site was behind the garage.
18 And that was based on the fact that most of the
19 bones that were recovered were found in that
20 location, that she would have expected more
21 breakage, and that she found a lot of small
22 delicate type of bones in that area, and so,
23 therefore, she concludes this must be where the
24 burn took place.

25 But Dr. Fairgrieve told you, that from

1 his own case experience, real world case
2 experiences, he has found the tiniest bones in
3 the human body, the little bones in your middle
4 ear. He has found those moved into the secondary
5 site, not at the original burn site.

6 And he told you something else that,
7 frankly, just makes common sense. In his
8 experience, where the majority of the bones are
9 found, that's the location where the bones were
10 moved to. Why? Why does that make common sense?
11 Because if you're -- if for whatever reason you
12 are trying to disguise the original site where
13 the burn took place, and you are going to plant
14 them, or put them some place else, of course you
15 are going to move as many of them as you can to
16 the second location. That makes common sense.
17 It would make perfect sense. And it fits with
18 Dr. Fairgrieve's own real case experience.

19 The other thing Dr. Fairgrieve said is
20 that, had an expert been called to the scene, a
21 real forensic anthropologist, you can determine
22 things about that. I believe he talked about a
23 case where he was able to tell that this was the
24 first, the original spot of burning, because
25 there was some anatomically connected bones.

1 Even though burned, they are close together,
2 anatomically, so you can tell that's where they
3 were burned. If you moved them, they would fall
4 apart and they would be rearranged.

5 Unfortunately, Dr. Fairgrieve, again, he
6 didn't go out on a limb. He said, I cannot tell
7 you for certain, where the original burn site is,
8 nobody can, because of the collection effort.

9 And I'm not faulting these officers,
10 there's nothing deliberate going on here. They
11 probably never encountered a case like this
12 before. And what they should have probably done
13 is just put a tarp over it. Instead, Agent
14 Sturdivant recalls -- I think it took five hours
15 before Mr. Ertl to come to the scene. And it's
16 already starting to get towards dark, 3:00, 3:30
17 or something. So they're hurriedly trying to get
18 as much as they can, working up to dark, until it
19 gets too dark, without light.

20 It's not that they deliberately
21 destroyed the evidence at the scene, but by
22 moving it without the kind of knowledge -- Well,
23 you have seen archaeologists on TV and in movies,
24 you know how they do it, how they move very
25 carefully with brushes. They want to make sure

1 that they can determine exactly where the
2 location of these bones are. Because, if they
3 are not in any kind of anatomical connection,
4 that tells you something.

5 So, Dr. Fairgrieve -- I'm sorry --
6 Dr. Eisenberg tells us that these bones were
7 found in the burn barrel. Zoom in first so you
8 can read the top. This is Exhibit 401. Evidence
9 Tag 7964, she told you was bones recovered from
10 one of the four Janda burn barrels that were
11 located.

12 She finds long bone shafts, metacarpal
13 fragments, vertebral -- vertebral fragments, and
14 a scapula fragment. And the helpful little
15 diagram here describes where you would find these
16 in your body. Now, obviously these are scattered
17 all over ones skeleton. It's not like somebody
18 dismembers an arm and burns that in the burn
19 barrel and you would expect to find only those
20 items. These were scattered and we'll talk about
21 why in just one second.

22 I think this was -- This is Exhibit 402,
23 the pelvic bones that were found in the quarry.
24 Now, again, possible, I'm not going to overstate
25 here. She was not conclusively able to determine

1 that they were human, but they were all burned to
2 the same degree. And she certainly could not
3 rule it out.

4 What explanation is there for finding
5 scattered bones of Teresa Halbach in the burn
6 barrel and in the burn pit. I'm going to propose
7 one possible theory, there could be others. You
8 may come up with others on your own. But I want
9 to show you, first, one of the instructions the
10 judge read you that's in your packet.

11 Focusing here on the reasonable
12 hypothesis. If you can reconcile the evidence
13 upon any reasonable hypothesis, consistent with
14 the defendant's innocence, you should do so and
15 return a verdict of not guilty.

16 I suggest that a reasonable hypothesis
17 is that somebody else burned Teresa Halbach's
18 body elsewhere, maybe in the quarry, maybe
19 somewhere else. And then they used that burn
20 barrel that was found on the Janda's property as
21 a container to transport the remains, as many as
22 they could scoop in, to Mr. Avery's backyard.

23 And they dump it in the burn pit, or
24 scatter it about, whichever, think that they've
25 got it all, turn it back over. And think about

1 how heavy these burn barrels are, you are not
2 going to be able to lift them up and turn them
3 upside down as easily as you would be tipping
4 them over. And they inadvertently leave a few
5 behind. This is most likely happening in the
6 dark.

7 And the barrel gets, then, placed over
8 on the Janda property, along with the other three
9 that were there, and so there's four barrels
10 found. That explains why there's scattered bones
11 from all over, skeleton, found in the barrel.
12 Explains why most of them are there in
13 Mr. Avery's. And explains why any would be found
14 in the burn barrel at all.

15 If Mr. Avery wanted to get rid of the
16 bones, from his burn area, he would not put a
17 scattered few in someone else's burn barrel and
18 leave all the rest behind. That's not making
19 sense. It doesn't make sense. No one would do
20 that.

21 One other little interesting bit of
22 testimony that almost slid by me, actually, was
23 Mr. Dassey, Bobby Dassey's testimony. Sometimes
24 the truth comes out in little dribs and drabs
25 when people aren't expecting it. And on direct

1 examination, as Mr. Kratz, I believe it was, was
2 trying to lead Mr. Dassey through a number of
3 photographs.

4 He asks him about the burn barrels that
5 your mom has out back. And Bobby says, we have
6 three. And then they try to correct him, and
7 he's like, I thought we had three. And yet four
8 are found on November 5th.

9 Where did that fourth one come from? I
10 submit it was the transport item used, perhaps
11 picked up, used to transport the bones and then
12 placed over where the others would -- where the
13 others were.

14 Let me tell you something about who
15 another possible suspect is. It may not, but
16 it's a reasonable hypothesis to explain the bones
17 the way they are. Now, when you realize -- The
18 reason I'm spending some time on this, is when
19 you realize that this is what may have happened
20 here, then you realize why it's so important.

21 Because if that body was burned
22 elsewhere and then moved and dumped on
23 Mr. Avery's burn pit, then Steven Avery is not
24 guilty, plain and simple. Because no one would
25 burn a body somewhere else and then move the

1 remains and dump them in your own backyard. No
2 one would do that.

3 Now, that's why the State has gone to
4 such trouble avoiding the fact that the bones
5 were moved, that's why you heard nothing about it
6 here. Because it does not fit with their theory
7 that Avery is guilty. They know that if you come
8 to believe that there is reasonable doubt about
9 whether those bones were moved to Mr. Avery's
10 backyard, then you are going to find him not
11 guilty.

12 You have to find him not guilty. Even
13 if, in the end, you aren't completely satisfied
14 how it occurred. Because although we offer you a
15 theory of defense, that does not mean that we
16 take on the burden of proof. The State has the
17 burden of proof. They have to answer the
18 questions that come to your mind, beyond a
19 reasonable doubt.

20 If someone is framed, they are not going
21 to be there. They are not going to see how
22 exactly it is done, but this is consistent with
23 the evidence, I submit.

24 Now, let's turn from the evidence that
25 appears to be incriminating, but is suspicious.

1 Let me turn for a moment to some of the evidence
2 that is lacking, that you would expect to find,
3 if Mr. Avery was really guilty.

4 There was blood identified in the RAV4,
5 that is, Mr. Avery's. And I don't know why,
6 frankly, we went through this exercise in
7 statistics in figuring out what a billion means,
8 when we're not, we've never challenged that. We
9 don't challenge that -- whether his profile --
10 when they come in and they say this is his blood,
11 this is not his blood, or whatever, there is no
12 dispute on that.

13 The question is, how did that blood get
14 there. And as you think, again, what a case
15 would look like if someone is framed, this is
16 very important as well. Because in the RAV4,
17 they find five, ultimately six stains, I believe,
18 which they theorize must have come from an
19 actively bleeding person, which means, the person
20 was not wearing gloves, and yet, they find no
21 fingerprints.

22 Why, because fingerprints are very
23 difficult to plant. Can't say it's never been
24 done, but it's extremely difficult to plant
25 someone's fingerprints. Much easier to plant

1 someone's blood, if you can get ahold of some.

2 So that right there is peculiar.

3 Now, is it because he wiped off his
4 fingerprints, took the time to wipe off all his
5 fingerprints, but missed the blood. Come on,
6 that doesn't make sense at all. Besides, we know
7 that there are eight unidentified fingerprints,
8 at this moment, that were found on that vehicle,
9 including some very incriminating locations.

10 I went through it with Mr. Riddle.
11 Right on the back rear cargo door of the RAV4 --
12 which of course I don't have -- right where you
13 would expect, if somebody is opening that door to
14 put a body in, they are going to find your
15 fingerprints, if you're not wearing gloves. And
16 if you're bleeding you're not wearing gloves.
17 You can't be. You can't have it both ways.

18 I would also point out, Dr. --
19 Mr. Riddle, I asked him, well, you took the
20 fingerprint standards of Lieutenant Lenk and
21 Sergeant Colborn. You know what the defense here
22 is. You know what we have been accusing them of
23 for the last month or more. Did they ask you to
24 compare these unidentified latents that were
25 found on Teresa Halbach's vehicle with Sergeant

1 Colborn or Lieutenant Lenk's standards, to see if
2 you could rule them out, or match. The answer,
3 no. Why, because they don't want you to know.

4 You cannot open this vehicle without
5 touching that latch. And this is where he said
6 he found them, the fingerprints. There, there,
7 and there. Riddle also found them on the hood.
8 Isn't that interesting. He says the lifting up
9 of the hood has been a big part of the State's
10 case. No one has compared those to Lenk and
11 Colborn.

12 The other thing that's kind of curious
13 is that no one at the scene sees any blood in the
14 vehicle. Granted it's -- part of the windows are
15 tinted, and it's -- but it's not dark. This
16 vehicle was found at 10:30, 11:00 a.m. in the
17 morning, on a Saturday.

18 And I believe Mr. -- or Special Agent
19 Fassbender, I believe he was the one, that says
20 he came with his flashlight. Maybe that was
21 Ertl. Was looking 5 or 10 minutes inside that
22 vehicle and didn't see any blood. Now, maybe you
23 won't see the blood on the black CD case, but if
24 indeed the vehicle is locked, you might want to
25 be looking inside to see if there's a key,

1 wouldn't you think.

2 You are going to be shining your
3 flashlight right there to see if maybe the key is
4 in the ignition, no one sees this rather peculiar
5 looking bloodstain that looks sort of like you
6 might get if you take a Q-tip and dab it.
7 Doesn't look consistent with the State's theory,
8 as I understand it.

9 And then you look at maybe the most
10 obvious lack of evidence. And that is the
11 complete lack of any blood or DNA of Teresa
12 Halbach anywhere inside Mr. Avery's entire
13 trailer and you heard what the police did with
14 that trailer. They peeled off the paneling, they
15 ripped up the carpeting.

16 You heard Mr. Ertl talk about how in one
17 instance he was familiar with, the suspect had
18 cleaned up the carpet with carpet cleaner and it
19 wasn't noticeable. When they peeled the carpet
20 back, it had soaked through to the pad. Well,
21 the police were at least smart enough to look for
22 that.

23 Here no blood on that pad. No blood on
24 the carpet. No bloody bedding. Admittedly, you
25 could burn the bedding, sure. You could get rid

1 of the bedding. But no blood on the mattress.
2 And there's no evidence that there was any change
3 in the mattress. And there's no evidence that
4 any mattress or box springs or any of that was
5 burned.

6 No blood spatter on the walls or the
7 ceiling. No bloody trail of a body being carried
8 out of that bedroom into the garage or into the
9 burn pit. Nothing on the carpet. Nothing on the
10 back stoop, the deck, anywhere. No scratches on
11 the headboard. No rope fibers on the headboard.
12 Nothing that would indicate somebody restrained,
13 struggling for their life, was murdered in that
14 bedroom.

15 Why am I telling you this? The State is
16 now saying he was -- I believe they are trying to
17 argue that she was killed in the garage, although
18 that's still not clear either. Why do I care
19 about the bedroom, because the Judge has told you
20 that you bring your common experiences too, you
21 can rely on those common experiences. And one of
22 the common experiences that you have all,
23 unfortunately, been exposed to, was the pre-trial
24 publicity in this case.

25 ATTORNEY KRATZ: Judge, I'm going to

1 interpose an objection. He is commenting on
2 pre-trial or out of court statements, whether by
3 counsel or by other witnesses. That is absolutely
4 improper. That is not a common experience that they
5 bring to the courtroom.

6 THE COURT: All right. Just a second, I'm
7 going to excuse the jury for a couple minutes.

8 (Jury not present.)

9 THE COURT: You may be seated.

10 ATTORNEY BUTING: Judge, I'm actually
11 bringing this up only to show them, and my next
12 explanation would be how important it is not to leap
13 to a quick judgment and why it's so important that
14 they disregard all of that kind of information they
15 may have heard before and focus on the evidence in
16 this case. That's where I'm going with this.

17 THE COURT: Okay. I wasn't sure from the
18 introduction comment if you were going to refer to
19 any information that was not introduced as evidence.
20 As I understand it, you are telling me you are not.

21 ATTORNEY BUTING: That's correct. That's
22 all I intend to say about it.

23 THE COURT: Mr. Kratz.

24 ATTORNEY KRATZ: When he starts with,
25 unfortunately, you were exposed to information, he

1 is pre-supposing, first of all, that they know that.

2 Secondly, Mr. Strang and Mr. Buting, in
3 jury selection, referred in great detail to out
4 of court statements in this particular case.

5 But, third, and most importantly, the
6 jury has already been instructed not to consider
7 anything that was outside the courtroom. So to
8 highlight some -- something they may have heard
9 on the news, or something earlier, is absolutely
10 improper and I'm suggesting that Mr. Buting knows
11 that.

12 ATTORNEY BUTING: I disagree. This jury
13 was exposed to false, misleading information for
14 months. And it's not until they came into this
15 courtroom that they heard the other side. That's
16 the point -- this is the best example I can think of
17 on why a case has to be decided and tried in the
18 courtroom.

19 The Court's instructed them. We talked
20 about it in voir dire. We couldn't ignore the
21 fact that at least three of these jurors who are
22 sitting here today came in saying, I think he's
23 guilty. They promised to put it aside, but
24 that's all I'm doing is reminding them of that.

25 THE COURT: One of the problems, as I

1 recall, is that the jurors, and I don't have each
2 individual juror's answer committed to memory, but
3 it's my understanding that they were exposed to
4 pre-trial publicity in varying degrees. For the
5 most part we wound up with jurors who weren't as
6 exposed to the publicity as some others. But I also
7 agree that we do not have a jury composed completely
8 of people who were not exposed to any pre-trial
9 publicity.

10 I'm a little concerned that, even the
11 reference to publicity, for the same reasons I
12 expressed as one of the reasons for dismissing
13 the false imprisonment charge is, references to
14 it could possibly lead the jurors to talking
15 about it in deliberations and that's something
16 that I don't think we want.

17 ATTORNEY BUTING: I agree. And that's as
18 far as I was going with it. I wasn't going to draw
19 any more references to it, other than to remind them
20 how I think this is the best example, now that they
21 have been through the process, to understand why it
22 is so important for them to only judge the case on
23 the facts, not speculating.

24 THE COURT: All right. I'm going to ask
25 you -- you can refer to speculation, but I'm going

1 to ask you to phrase it in some other way that
2 doesn't involve referring to pre-trial publicity, in
3 order to avoid the problems with it.

4 ATTORNEY BUTING: That's fine. I will just
5 finish by saying, that this case is an example of
6 why you can't leap to quick judgments and why you
7 should base your decision on the evidence in court.

8 THE COURT: That's fine. Anything else,
9 Mr. Kratz?

10 ATTORNEY KRATZ: I'm not sure how to
11 un-ring that bell, Judge.

12 ATTORNEY BUTING: Well, I wish I could
13 un-ring it too.

14 THE COURT: Both parties have made
15 arguments about un-ringing bells. I don't think the
16 comments that have been made thus far get us
17 significantly into that problem to require
18 corrective action. So as long as there's not going
19 to be a reference -- any further reference to any
20 pre-trial publicity, lets bring the jurors back and
21 allow Mr. Buting to continue.

22 ATTORNEY BUTING: Thank you.

23 (Jury present.)

24 THE COURT: You may be seated. Members of
25 the jury, we're hoping that our sound problems are

1 related to a bad battery, so the battery is being
2 replaced. In a minute, we'll resume.

3 ATTORNEY BUTING: All right. Where were
4 we. What I think this case is, is a good example of
5 why it is so important that people not leap to quick
6 judgments about a case, maybe decide something
7 that's based -- that's not based on the evidence you
8 hear in court. You promised, and I'm confident you
9 all will decide this case based only on the evidence
10 you have heard in court, and this case is a good
11 example why.

12 Let's look at what else evidence -- what
13 other evidence is lacking. Now, if the State's
14 theory is that she was shot in the garage, where
15 is her blood? None of her blood is found in that
16 garage.

17 We have heard testimony about high
18 velocity blood spatter that comes when someone is
19 shot from a bullet. There's none on the floor.
20 Maybe even more important, there's none on any of
21 all that -- any of that clutter that you saw.
22 When it's high velocity spatter, it can go
23 anywhere.

24 How would Mr. Avery be able to clean up
25 everything, not just on a floor, but every little

1 item. Because, remember, at least in March, they
2 picked up and handled every single, and examined
3 every piece of evidence. Every cooler, every
4 box, every can, every piece of junk that we all
5 have in our garage, they looked at. And that's
6 where you would expect to find spatter that no
7 one would be able to clean up, even if they tried
8 to clean up.

9 Now, is there evidence that he did clean
10 up at all? Well, his blood was found in the
11 garage. Why is that? If he's cleaning up, how
12 is it that his blood is found there. Is he able
13 to see a blood spot and say, oh, that's Teresa
14 Halbach's blood. Oh, that's mine, I can leave
15 mine, I will just clean up hers. Come on.

16 They have you believe that -- I'm
17 assuming he's going to get up here and say, this
18 is what happened because, of course, we haven't
19 heard it yet, that the bottle of bleach is so
20 incriminating. I don't know anybody who doesn't
21 have a bottle of a bleach somewhere in their
22 house. And an important part is, it was in his
23 house. They say it's in his bathroom, what they
24 didn't tell you until I got up and cross-examined
25 them, is that the bathroom is the laundry room.

1 So even there they try and mislead you into
2 thinking something means more than it does. A
3 bottle of bleach found in ones laundry room means
4 nothing. And it means nothing in this case.

5 And, by the way, if the theory is that
6 there's no blood of Teresa Halbach anywhere on
7 the floor of that garage, is that because he is
8 such a good cleaner, then why are there 10, 11
9 .22 shells laying all over the floor right in the
10 open. Don't you think if they are going to go to
11 the trouble of cleaning up the blood, after you
12 kill somebody, that maybe you might pick up the
13 shells that are right out there in plain view for
14 the police to find. Don't you think that would
15 be what you would do?

16 So those are some examples of the kind
17 of evidence, that if someone is being framed, you
18 might expect to find -- you might expect to find
19 lacking, because it doesn't fit with the reality
20 of what would have happened if the crime actually
21 occurred as the State apparently alleges.

22 We talked about one piece of
23 incriminating evidence and how that looked
24 suspicious. Let's look at maybe the biggest,
25 most glaring suspicious piece of evidence in this

1 case. The magic key, Exhibit A, in this theory
2 that the police planted evidence in this case.

3 Because if you believe that those police
4 officers put that key in his room, that they are
5 capable of planting that kind of evidence to try
6 and link him, then why not plant -- why couldn't
7 they have also planted blood. If they go to that
8 extent that they -- that they plant Teresa
9 Halbach's key in his bedroom to try and convict
10 him, then that's it, it's over, case over,
11 because you can't rely on anything else they have
12 given you.

13 Now, let's look at this key. First of
14 all, why would he bring the key in his house and
15 put it in his own bedroom. Why would you do
16 that? If you still got the vehicle, and you
17 still wanted somehow to use the key, to drive it
18 some place -- by the way, why would you want to
19 disconnect the battery, if you're still going to
20 use the key? What good does the key do if the
21 battery is disconnected? So that's a disconnect,
22 no pun intended here.

23 But why wouldn't you just leave the key
24 in the car? Why wouldn't you hide the key under
25 the -- neath the car, or somewhere where you know

1 it is? Why would you bring an incriminating item
2 like that into your own bedroom, especially since
3 you know, as of November 3rd, when Sergeant
4 Colborn comes to visit him, and November 4th,
5 when Lieutenant Lenk and Detective Remiker come
6 to visit him and all the television cameras are
7 there, that you are a person of interest, right?
8 You are not going to put the key in your bedroom.
9 Doesn't make sense.

10 And, then, the key is not found until
11 the 7th search of that trailer. You already had
12 four grown men in that little trailer. I'm
13 sorry, in that little bedroom they had four men,
14 for three hours, on Saturday night, November 5th.
15 And they come in here and they try to tell you
16 that's not really a thorough search. Three hours
17 in a little bedroom with four men, is not enough
18 time to do a thorough search? Who are they
19 trying to kid here.

20 And, then, it's not until November 8th,
21 when they have been in the bedroom, again, with
22 three men: Lenk, and Colborn, and Kucharski,
23 it's another hour or more before they find it
24 then. There's a common theme, by the way, that
25 we've been hearing in this case, whenever

1 something is mysteriously found much, much later
2 when it should have been, but earlier searches
3 didn't count, those were just cursory searches,
4 three hours cursory searches.

5 This computer rendering of the bedroom
6 is helpful just to show you how small this
7 bedroom is. How long does it take four men to go
8 through a closet, a dresser that's over here, a
9 desk and a bookcase, or World War II record album
10 holder, whatever it is. Seven entries.

11 Now, I submit that the reason it wasn't
12 found in the first entry is because there was a
13 watchdog along, Sergeant Tyson. The one thing
14 that they did was, they say it's okay to use
15 these Manitowoc officers for searches because
16 we're going to have a Calumet person there with
17 them to make sure nothing goes wrong.

18 Sergeant Tyson admitted he had never
19 been in a situation before where he had been told
20 to keep an eye on those guys, your fellow cops,
21 keep an eye on them. What are you doing putting
22 those three men into the person of interest, he's
23 a suspect in their eyes, what are you doing
24 putting three cops who have that kind of
25 potential conflict in that person's bedroom, that

1 you need to have another officer from another
2 agency watching over them, babysitting them.
3 That is absurd.

4 Lenk and Colborn volunteered for that
5 duty and they volunteered for a reason. But in
6 the first search Sergeant Tyson did his job. I
7 believe it when he says that he watched them. He
8 looked like a watchdog. He was watching them
9 like a hawk and he wasn't searching. That's
10 important too. They were doing the searching and
11 he was just doing the collecting. So the
12 opportunity wasn't there for Lenk or Colborn to
13 plant the key.

14 And then they are in there again, very
15 briefly the next day, again, with Tyson. Note
16 that each entry they are -- they are -- each time
17 they go in there, they were with Tyson, except
18 for November 8th and they go in with Deputy
19 Kucharski, who tried to make light of it by
20 saying that, you know, the possibility of
21 planting is about as likely as aliens coming down
22 and planting it.

23 But he had to admit, he was not told to
24 watch those officers. He was there with Lenk and
25 Colborn. He's told to search and that's what

1 he's doing, he's doing his job. And he's sitting
2 on the bed, after one hour. In fact, I think he
3 said he was getting almost done and took off his
4 gloves. He's sitting here, going through this
5 drawer.

6 Lieutenant Lenk is right here with his
7 back to him, like this, crouched down on the
8 floor, so he's not going see what's going on.
9 Lenk gets up, walks out the door, comes back in a
10 minute later, oh, my gosh, look at that, there's
11 a key. Low and behold, it's in plain view.

12 And so they come up with this theory,
13 this absolutely preposterous theory on how this
14 magic key, that no one ever finds before,
15 suddenly appears in plain view, out of this
16 bookcase. They find it right there, where those
17 slippers are. Right like that.

18 And how does it happen, well, they
19 decide, maybe they help the back of this cabinet
20 a little bit, but they decide that somehow this
21 key must be secreted in this cabinet, by Mr.
22 Avery, in his own bedroom, with everybody looking
23 at him, and that it somehow magically fell out
24 this -- this gap, bounces off the wall. And by
25 the way, we're talking about key, fob, and

1 plastic clip. Somehow bounces off the wall,
2 turns around the corner and lands, what is it 90
3 degrees from where it should be, where it would
4 have fallen.

5 Now, here is something else. I want you
6 to contrast what the State -- what kind of
7 evidence the State has given you. In this case,
8 we have been presented with a wooden gun rack, as
9 an Exhibit No. 196. This has really been
10 important in this case, hasn't it, this wooden
11 gun rack. It's meaningless. They have got --
12 And we have a got a photograph of it too. We
13 have the real thing and the photograph. What do
14 you need this for? Why do need this for? Why is
15 this in evidence. This is totally irrelevant.
16 They have pictures to show the guns are on the
17 wall, okay.

18 We have got a photograph of an empty
19 box. And we have got the box right here. We
20 have got a photograph of another empty box, and
21 we have got the empty box here too. What did
22 they give you on this bookcase, that, a
23 photograph. Where is the bookcase? Where is the
24 bookcase? Don't you think that's a little more
25 important in this case than that wooden gun rack.

1 They don't want you experimenting with
2 that bookcase and this key, because they know you
3 will see that it is incredibly improbable that
4 this key is going to find it's way out, the key,
5 the ring, the cloth fob, the plastic clip, and
6 not get hung up on anything. It's going to
7 bounce around like they say it will. So you ask
8 yourself why you haven't seen that, right there
9 in the property room. Nice picture of it.

10 ATTORNEY KRATZ: Judge, I'm going to
11 interpose an objection. Counsel is suggesting that
12 only the State could have introduced that, instead
13 of the defense.

14 ATTORNEY BUTING: State's burden.

15 THE COURT: I'm over --

16 ATTORNEY KRATZ: He's suggesting only the
17 State.

18 THE COURT: This is closing argument, the
19 objection is overruled.

20 ATTORNEY BUTING: While we're at it, while
21 we're talking about candor with the jury, I don't
22 know if you recall, but I do, in the opening
23 statements, these nice PowerPoint presentations that
24 Mr. Kratz has prepared, one of them he puts up there
25 in his opening statement and he shows this tailgate.

1 Puts up a nice PowerPoint slide showing the rear of
2 the vehicle like this.

3 And he's going through where Mr. Avery's
4 blood, DNA, was found on Teresa Halbach's
5 vehicle. And he's got one of his nice slick
6 arrows pointing right here with a circle. I see
7 that and I think, my gosh, I have been working on
8 this case for months, did I miss that; how could
9 I miss that the client's blood is supposedly on
10 the back tailgate. Well, when I looked more
11 carefully, and as we heard from Sherry Culhane,
12 he was wrong. There was no blood of Mr. Avery
13 ever found on the rear of that vehicle on the
14 tailgate. Now, Mr. Kratz is human, we all make
15 mistakes; I have certainly made plenty here. But
16 that's a pretty big mistake.

17 The key, also, by the way, has no blood.
18 Remember, she swabbed it and the stains were
19 clean and it only has his DNA. And, frankly,
20 counsel misspoke when he said, it's always the
21 last person -- when you are talking about trace
22 DNA from the fingers, it's always the last person
23 that touches it that's going to be on there, not
24 what the testimony was as I recall it. Testimony
25 was, the last person may have more of it, but you

1 are going to find a multiple, most likely, at
2 least two people. Particularly when it's an item
3 like a key that someone handles every day and
4 deposits their own DNA on.

5 And, finally, before we take a break
6 here, the source of Mr. Avery's DNA in his house
7 is plentiful. Toothbrushes, razors, all kind of
8 personal items in ones home, if Mr. Lenk and
9 Mr. Colborn wanted to put Mr. Avery's DNA on that
10 key, that was easily available. It doesn't have
11 Mr. Avery's fingerprints on the key; doesn't have
12 any of Teresa Halbach's DNA on the key.

13 Keep in mind, also, when you think about
14 the evidence that's lacking and evidence that's
15 suspicious, you came into this case, and as I
16 recall seeing up there on the PowerPoint slides,
17 there were four charges, now there's three.
18 Think about that, while we take our break. Is
19 this okay, your Honor?

20 THE COURT: Yes. All right. Members of
21 the jury, we'll take a break at this time. Again,
22 do not begin your discussions of the case until all
23 the arguments have been completed and the Court
24 submits the case to you. You are excused.

25 (Jury not present.)

1 THE COURT: Counsel, can I see you briefly
2 in chambers at the start of the break.

3 ATTORNEY BUTING: Sure.

4 (Recess taken.)

5 (Jury present.)

6 THE COURT: Members of the jury, before we
7 resume, I can report to you that I met with counsel
8 during the break. I just wanted to give you some
9 idea about where we were going from here. But we
10 are probably going to go late today in order to
11 finish the closing arguments of the parties. There
12 isn't going to be any time to begin deliberations
13 today.

14 After the closings are finished, we will
15 take a brief break to identify the alternate
16 jurors who will not be deliberating and then we
17 will adjourn for the day and begin deliberations
18 tomorrow morning. We are going to take breaks,
19 probably at faster intervals than normal, to keep
20 you fresh enough to follow the closing arguments,
21 but closing arguments will be what we will
22 complete today. Mr. Buting, you may resume.

23 ATTORNEY BUTING: Thank you, Judge. Before
24 I leave the magic key for a minute, I just want to
25 make sure I was clear enough that, again, this is

1 her car key, that obviously she used every single
2 day. It was Teresa Halbach's key.

3 And I believe Ms Culhane said she
4 swabbed all the way around that whole plastic
5 holder, all the way around it. Not just along
6 one edge of it. And yet she found none of Teresa
7 Halbach's DNA, not a shred of it. And found only
8 Mr. Avery's DNA, as if somehow the key had been
9 wiped clean and his DNA was placed on it. He
10 certainly is not going to do that. He's not
11 going to wipe off her DNA and leave his behind.

12 And as to the bookcase, why it's not
13 here, think about, again, it's their theory, that
14 this key could have found it's way magically out
15 of that bookcase and into its position. Their
16 burden of proof in the entire case, and also
17 their theory to explain to you how this very
18 unusual key materializes out of nowhere and yet
19 it is not here.

20 All right. Now, let's look at another
21 piece of evidence that initially appears,
22 certainly incriminating, but as you look more
23 closely, looks more and more suspicious. And
24 that is, Mr. Avery's blood in the RAV4.

25 Keep in mind that we're talking about a

1 very little amount of blood here. Mr. Kratz
2 maybe confused you when he made it seem like
3 there was a lot. Yeah, there's not one
4 microliter, but we're talking very small amounts
5 of blood. As a matter of fact, the photographs
6 that were taken by Mr. Groffy, before any swabs
7 were taken, before any of the blood is wiped off.
8 This is the front seat, I can barely see
9 anything, unless that -- if that's the spot of
10 blood, right there, that's awfully small,
11 particularly when you are talking about fabric.

12 The CD case, can't even find any blood,
13 can't see any blood. I believe Mr. Stahlke must
14 have misspoke when he said it seemed like it was
15 covered, that there was lots of blood on it.

16 The FBI guy who looked at it, the swabs,
17 we'll talk about that, Mr. -- Dr. LeBeau, later.
18 But he showed you pictures of those swabs and
19 there was hardly any blood on it. In fact, they
20 looked gray, like fingerprint dust, or something.

21 So, really, we have this and this, which
22 Mr. Stahlke says is consistent with active
23 bleeding. It is also consistent with active
24 planting. So when I first saw this, I thought,
25 you know, what is the source of Mr. Avery's

1 blood.

2 Well, we have heard about how his -- he
3 had blood in the bathroom. And so I looked at
4 these pictures, these were pictures that I
5 believe either Detective Remiker or Sergeant
6 Colborn testified that they went around and took
7 on Saturday night, at the apartment, before there
8 was any kind of seizures of swabs.

9 The first thing you do when you go in is
10 you take pictures and then you start collecting
11 evidence. Well, you look at this particular
12 swab, we'll do a close up on it. It's an awful
13 odd looking blood drop, with a little whole in
14 the middle, as if somebody would dab a Q-tip in
15 it, that was my first thought.

16 And, then, the blood vial. And I offer
17 that -- and we have offered that as a possible
18 source of the blood that's found, Mr. Avery's
19 blood that's found in the RAV4. It was in a
20 public office, in an unsecured area; not in a
21 vault where they keep locked up exhibits only;
22 not down in the basement where they normally keep
23 old files; but in that battered old cardboard box
24 that we saw sitting in the Clerk's Office,
25 because it was -- there were so many requests to

1 see it, from the media and the public, that that
2 made it more convenient.

3 They kept no good log back then, of
4 people who were asking to see files, see any
5 file, that one not withstanding. The clerk, Ms
6 Zigmunt, later tightened that up in, I think it
7 was October of '06, this past year. Now
8 everybody has to sign in before they can look at
9 any file. But back then she admitted that the
10 deputy clerks would be more casual about it. And
11 who would you be more casual about making someone
12 sign in than a police officer, who you would
13 normally trust.

14 So there would certainly be no reason
15 for these clerks to take note or think that some
16 police officer, Lieutenant Colborn, or Sergeant
17 Colborn, I'm sorry, Lieutenant Lenk or Sergeant
18 Colborn, would have any nefarious intent by
19 looking at Mr. Avery's file. And that area of
20 the file where it's kept is sort of screened off
21 from the rest of the unit.

22 And probably more likely, though, is the
23 after hours access that the deputies have. The
24 Manitowoc Sheriff's Department is responsible for
25 security in the courthouse so, understandably,

1 they have master keys that fit all the doors.
2 And how difficult, really, would it be for
3 someone like Lieutenant Lenk or Sergeant Colborn,
4 veteran officers, to come in after hours, or on
5 Saturday morning, and get what they needed. I
6 submit it would be not difficult at all.

7 Now, Mr. Kratz, I can hear him now, he's
8 going to get up here and say, where is the
9 evidence. This is all speculation. Where is the
10 evidence. As if he would expect anybody who was
11 being framed to have a videotape of the officer
12 taking the vial of blood and planting it.

13 Or as if he expects one of these police
14 officers, in front of everybody, under oath, on
15 streaming video on the internet, to admit, oh,
16 yes, of course, I took the blood and planted it.
17 Yes, I would admit that if I did it. Sure, I
18 would go away to federal prison probably but,
19 yeah, rather than lie under oath, I would rather
20 go to prison than admit that.

21 Come on. This is real life. It's not
22 TV. You can't expect a *Perry Mason* moment where
23 you're going to get somebody to admit, to you
24 guys, and everyone else in the world, that they
25 did this.

1 So what do we have, though. We have
2 reasonable inferences that can be drawn and
3 circumstantial evidence, just like they do.

4 The box, you have seen the video, I'm
5 not going to go through all that again, but I
6 want to just remind you, show you the box.
7 Evidence tape is very clearly cut, opened, and
8 the box is resealed with nothing but a piece of
9 scotch tape.

10 This one may show up a little better.
11 Inside the box was the styrofoam container, and
12 it was opened by all of us together, which also
13 had -- which also had evidence tape sealing it,
14 right along here. And on the video, you could
15 see very clearly that that was slit, as if by a
16 razor or scissors, or something sharp. So that
17 one would easily open this sort of clam shell
18 styrofoam container, and there is the vial of
19 blood.

20 The vial of blood has a hole, what
21 appeared to be any way, a hole in the middle,
22 right there, which is where professionals would
23 gain access to the blood, if they need it. But
24 this vial has something more, as even Dr. LeBeau
25 admitted. This vial has blood in between the

1 rubber stopper and the glass, so that the experts
2 who use these things all time, could say, even
3 Dr. LeBeau, I believe is the one, who said this
4 vial, clearly the top had clearly been taken off.

5 So, there's evidence that the box was
6 unsecured and the top had been removed at some
7 point. And the blood is still liquid. Can't
8 really show you it in there, the way they have
9 got it incapsulated in yet another glass tube.
10 You can't really see it, but you did see, I
11 think, in the video, as it was rocked back and
12 forth, the blood was still liquid and, therefore,
13 easily available to plant. And we're only
14 talking about a few drops. That's all that's
15 necessary to leave the amount of blood that they
16 found in that RAV4, a few drops, that's all.

17 Now, Lieutenant Lenk, whose name keeps
18 coming up at every important part of this case,
19 had reason to know that that blood of Mr. Avery's
20 was sitting in the courthouse. Because he was
21 the evidence tech -- the whole head of the
22 evidence department for Manitowoc. And he signs,
23 in 2000 -- what's the date here -- 2002,
24 September, he signed Exhibit 214, as the
25 transmitting, or submitting officer to submit

1 these items to the Crime Lab.

2 Now, I'm not trying to mislead you here,
3 these items do not include the vial that we're
4 talking about. But they clearly show that these
5 came from exhibits held by the court since the
6 end of the trial. And yet Lieutenant Lenk would
7 have you believe, in his testimony, that he had
8 no idea that that 1985 court file had any kind of
9 exhibits like that in there.

10 The one thing they did look for
11 fingerprints on, they looked for Lenk and
12 Colborn's fingerprints on the blood vial. No
13 surprise there. Second nature with cops when
14 they handle anything like that, a biological
15 piece of evidence, they are going to put their
16 gloves on. So, okay, they look there, don't find
17 any. But, again, they're looking for something
18 that they know isn't going to be there in the
19 first place, and trying to present that as if it
20 means something.

21 So then there's the question of the
22 opportunity to plant blood. And that's why we
23 heard all this testimony about the scene and
24 whether it was secure or not secure. Well, keep
25 in mind that that sheriff's department, even

1 though their bosses said, within 45 minutes of
2 getting there, that we're turning over this
3 investigation to Calumet, the one item, the one
4 item on that 40 acre property that they knew was
5 important, the main piece of evidence, was that
6 RAV4.

7 And they kept their officers in control
8 of it for four hours. Talk about the fox
9 guarding the hen house here, ladies and
10 gentlemen. Come on. Is that just a coincidence,
11 or is that Lenk and Colborn having some influence
12 here?

13 How carefully was it being watched?
14 Mr. Kratz told you that it was being maintained
15 very securely and carefully. Well, we heard that
16 until Special Agent Fassbender arrived at 2:25,
17 there was no log at all of who was coming and
18 going, looking at this main piece of evidence
19 that they knew about.

20 They rely on two civilians, Nikole and
21 Pamela Sturm, to be their watch dogs, so they can
22 see from this crusher, distance 369 feet, I think
23 it was, Mr. Austin measured. And, you know, I
24 don't fault the Sturms. I mean, its revision is
25 history, for them to say that they were watching

1 that carefully the whole time they were there,
2 that far away, to make sure nobody, even a police
3 officer, approached.

4 Why would they care. Once they knew it
5 was Teresa's vehicle, you know, the sad news that
6 it was, that's where their attention would be
7 drawn. They weren't watching this to see who
8 approached the RAV4.

9 And there was a tarp over the RAV4, for,
10 now, we find out, for an hour apparently,
11 according to the digital signatures that we can
12 find on digital photographs. And a tarp that's
13 built up in such a way that it's practically a
14 tent. That's not the best picture, but from a
15 distance, this large tented over object, being
16 very careful not to have the tarp touch the
17 sides, with a nice little opening here.

18 Now, maybe that's not when it was
19 planted, but it's certainly an opportunity.
20 Probably more likely is that it's getting dark,
21 and while the officer -- I don't believe, by the
22 way, that there was any testimony that Mr. -- or
23 Sergeant Orth was seated where Mr. Kratz said he
24 was. But even not withstanding that, what we did
25 hear was that there's other means of ingress and

1 egress to that property.

2 Sergeant Orth testified that while the
3 officers were somewhere in this area, remember
4 this picture was taken after the vehicle had been
5 removed, but that there's -- there's ways in and
6 out from the west. I will show you in a moment,
7 if I can find the overhead.

8 A little farther up, one can see the --
9 how the roads down here, we have lots of ways to
10 get in and put that -- First of all, for someone
11 to plant the vehicle. And, secondly, for anyone
12 to approach it while it's there. And an even
13 more distant shot that shows all the ways in to
14 this plot of land.

15 So while maybe directly to the south of
16 that berm it is not immediately accessible,
17 there's all these other ways in from here, or
18 from here. When somebody who knows the area,
19 perhaps someone who's been a patrol sergeant for
20 many years, knows the county like the back of his
21 hand, is going to know how to get to that RAV4.

22 Then we have this whole question of
23 whether the vehicle is locked or not. Well, the
24 Sturms said they thought it was locked, but then
25 when they were questioned more carefully it turns

1 out that Nikole didn't check the rear tailgate.
2 She checked it with her sleeve, the other four
3 doors, but not the rear tailgate.

4 If it was locked, by the way, who do you
5 go to when you lock your keys out. Most of the
6 time you go to call the cops. Who better knows
7 how to open up a car, quickly, than police? So
8 the fact that it was or wasn't locked isn't
9 crucial in this case, in my estimation.

10 But on this evidence, it's not entirely
11 clear, when it gets to the Crime Lab, it really
12 is locked. You will have to rely on your memory
13 for that, but I think the record is unclear,
14 frankly.

15 There is also, I want to point out, all
16 you would have to open, by the way, are two
17 doors, to put the blood where it was found. The
18 driver's side, you can reach everything in that
19 front seat and that one rear passenger door. So
20 you wouldn't have to have them all open and
21 sitting in the car in order to do this.

22 And then we have the interesting
23 circumstance of Lieutenant Lenk and his behavior
24 on November 5th and since then, in which he
25 testified, in a prior hearing in this case.

1 Lieutenant Lenk is the only officer, the only
2 witness in this case who was -- who has lied
3 under oath. He gave sworn testimony one day that
4 he didn't get to this site until 6:30 or 7:00,
5 when it is getting dark, but came in front of you
6 today and says, again, under oath, that it was
7 2:00.

8 Well, what happened in the interim? He
9 forgot about the logs. And when you look at the
10 logs, he signs out, but he never signs in.
11 Fassbender had those logs starting at 2:25. So
12 lo and behold, Lenk now appears on the scene at
13 2:00, to explain why he never logged in. Because
14 otherwise the alternative is, he comes at 6:30 or
15 7:00 and evades the guard that's doing the log.
16 That doesn't look good either.

17 So ask yourself, what evidence there is,
18 what inferences you can draw from a witness who
19 gives two different versions, under oath, about a
20 critical point like this. His whereabouts, by
21 the way, that entire day, he never writes a
22 report.

23 So, I also expect, again, because they
24 get to go last, I'm having to anticipate, and you
25 may have to answer some other questions that they

1 raise. But I expect that they are going to say
2 this would have to be this complicated wide
3 ranging conspiracy in order to frame Mr. Avery.
4 Not true. Not true at all. This could be done
5 by two officers, really one officer, the one
6 officer who keeps coming up, Lieutenant Lenk,
7 whose name is on the evidence transmittal from
8 the 1985 case, just a couple years earlier.

9 Lieutenant Lenk, who shows up on
10 November 5th without logging in. Lieutenant
11 Lenk, who finds the magic key. Lieutenant Lenk,
12 who four months later, four months after
13 Manitowoc no longer is needed, with no legitimate
14 reason, is back at that scene on March 1st and
15 what's found the next day, the magic bullet,
16 which we'll talk about in a moment.

17 Actually, let's talk about it now.
18 Again, every time they try and -- Every time they
19 find something that they should have found
20 before, it was because, oh, that prior search was
21 just for a missing person. We signed a search
22 warrant affidavit in which we said we were
23 looking for evidence of a homicide. But, oh, we
24 were just looking for a missing person, we didn't
25 know what we were looking for.

1 They are in that garage on November 6th,
2 for an hour and 47 minutes, three officers. They
3 find 10 or 11 shell casings, but they found -- if
4 they saw a bullet, don't you think they would
5 pick up that bullet? Don't you think that might
6 be important?

7 Now, where was it found? Right smack
8 dab in the middle, one of them. This is the
9 March 1st photo, but No. 9, right as you walk in
10 the door, the main overhead door, it's sitting
11 right there in a crack. Now, to you and I, that
12 may not look like much, but to an officer who's
13 looking for -- if they found .22 shell
14 cartridges, is going to be looking for a bullet,
15 that's going to be pretty obvious. But it's not
16 found until March 1st. And then the other, most
17 important one, is found back here, up against the
18 wall.

19 Now, one or two things had to happen,
20 either they missed it, during the first search,
21 or the scene had been altered between the first
22 search and March 1st. And, in fact, we know
23 that's what happened. We had the officers
24 identify, look at this, there's a different car
25 in there, there's this big engine hoist.

1 Mr. Avery wasn't altering it, but other people in
2 his family obviously had access, someone's car
3 was parked in there. Things probably moved
4 around, who knows.

5 But then we have testimony from Rollie
6 Johnson, about his many gofer hunts. He says
7 that if you go out there now, when the snow
8 melts, you will find his .22 shells all over the
9 place, including right -- most likely in that
10 garage. His gun, his .22 and, yeah, those shell
11 casings were fired in that .22, from that .22,
12 you can tell that because of the way the pin
13 hits.

14 But, according to Mr. Johnson, his --
15 the remnants of his firings, even years from now,
16 are probably still there. Especially if you
17 think about that, the Item FL, No. 23 that's
18 under the air compressor. That probably hasn't
19 been moved in years. Who knows how long that
20 bullet had been there.

21 It didn't have Teresa Halbach's DNA on
22 it, which we will talk about it in a moment. And
23 that bullet is probably totally irrelevant to
24 this case. Just one of many residues left over
25 from Mr. Johnson's target practices and whatnot.

1 I'm not sure it was entirely clear, so I
2 just want to go over with you and make sure it's
3 clear. The shell casings, we have two bullets
4 and 11 shell casings. The shell casings,
5 Mr. Newhouse was able to identify, came from that
6 gun, but he can't say that the bullet, the
7 ultimate bullet, FL, came from any of those shell
8 casings. And he can't say that Mr. Avery, for
9 that matter, ever handled any of them because
10 nobody did any fingerprints of them.

11 And, then, the second bullet, the one
12 they showed you that's down in the crack, that
13 was designated as Item FK, Mr. Newhouse said he
14 could not match to the gun, the .22 caliber
15 Glenfield Marlin that was found in Mr. Avery's
16 bedroom. He said that all he could say was that
17 it would come from a class -- gun of a similar
18 class, which I think included even a pistol that
19 we talked about, with a different brand name.

20 But we know, that on that very property,
21 the Avery 40 acre salvage yard area, there were
22 other, at least one other, maybe two, .22
23 Glenfield Marlin rifles. In Bobby Dassey's
24 bedroom, is one of them, exactly the same model,
25 one of the most common models in the world.

1 So, even Mr. Newhouse couldn't say
2 whether that bullet had any connection at all to
3 this case, or to Teresa Halbach, or even to the
4 gun that was found in Mr. Avery's bedroom, Rollie
5 Johnson's gun. He did say, however, that that
6 one item, under the air compressor, came from
7 that gun and no other.

8 And when I questioned that, how reliable
9 is that degree of science anyway. We're talking
10 about these eyeball comparisons to these --
11 comparison microscopes. It sounds very much like
12 the hair comparison analysis that had been
13 discredited years ago. And I predict this
14 so-called science is the next to go.

15 But at any rate, he was very defensive
16 about his field, perhaps understandably, but when
17 he wouldn't even admit that DNA is more objective
18 than this comparison thing he does, you got to
19 wonder. And, you also got to wonder why he
20 didn't show you the photos of the comparison of
21 the bullets, side by side, and neither did the
22 State.

23 He didn't want you to see those
24 comparison's, Mr. Newhouse, because he was afraid
25 when you looked at them you would see what I saw,

1 which is there's a lot of differences between
2 those two fields of view. And that his opinion,
3 that it came -- that they are one in the same,
4 they came from the same rifle, is questionable.

5 But, putting all that aside for a
6 second, even if he is correct, that that Item FL
7 that was fired from the .22 rifle that was
8 found -- Rollie Johnson's rifle, found in
9 Mr. Avery's bedroom, that still doesn't mean it's
10 connected to this case with any relevance.

11 Look at first, Mr. Olson, who does the
12 lead analysis from the fragments of the cranium
13 bones that he found. He said it's 99 percent
14 lead. Well, Mr. Newhouse, in his notes, and I
15 talked to him about this as well, he made a point
16 that this -- Remember he talked about the two
17 kind of bullets, some which are lead and some
18 which were coated.

19 And this one, I believe he said, was
20 coated with copper coating. Both of these
21 bullets -- fragments that he found, were coated
22 with copper. Where's the copper? I asked
23 Newhouse, did you -- did you try and compare that
24 -- the lead, little pieces of lead that he saw in
25 those x-rays, with the type of lead that's in

1 Item FL. And he said, no, he wasn't asked to.

2 So without some kind of connection
3 between Teresa Halbach and that bullet, the
4 bullet has no relevance in this case. It's just
5 a random fragment, that's found in an old garage,
6 that means nothing.

7 And so we come to Sherry Culhane. Now,
8 you know, one of the odd things about trying a
9 case with this kind of publicity, where other
10 people can watch at home, or wherever, is that
11 you get some feedback about how you do. Some of
12 it not so good. And some people told me maybe I
13 was a little hard on Sherry Culhane.

14 And if you think that, you know, I
15 apologize if I offended anybody with my
16 cross-examination of her, but I ask you not to
17 hold it against Mr. Avery. Because I have a job
18 to do and as an advocate, I need to point out, if
19 someone goes over the line and goes too far, you
20 have to understand it.

21 Now, I don't have a problem with almost
22 everything that Sherry Culhane did in this case,
23 and I said so. I haven't been up here disputing
24 her statistical calculation. I haven't disputed
25 any of her -- the Power Points where she's lining

1 up the profile of one to the next.

2 And it's true that she did help
3 exonerate Mr. Avery in 2003, although she sat on
4 it for a year and he spent an extra year in
5 prison, she did exonerate him by finding an
6 exclusion and then a match to Mr. Gregory Allen.
7 And we appreciate that. And I didn't mean to not
8 appreciate that.

9 But I also pointed out, it's not like
10 she's a defense witness either. She helped
11 convict him in 1985, with this now discredited
12 science of hair comparison analysis, where she
13 rendered opinions to jurors just like yourself.
14 So most of what she did in this case was fine; in
15 fact, it was more than fine. Because it really
16 excluded Mr. Avery from -- either Teresa Halbach
17 from all these items, or Mr. Avery from the other
18 items. Really the other way around, she's
19 looking for Teresa Halbach's DNA in incriminating
20 places. And she doesn't find it.

21 So I can imagine how frustrating it
22 might be when you get a phone message that tells
23 you this, early on, try to put her in his house
24 or garage. Now, this is not blind testing, by
25 any means. These agents are telling Ms Culhane

1 what they want. And this is November 11th.

2 Well, here it is, she's working on this
3 bullet fragment now, in March. And she still has
4 not found one item that links Teresa Halbach to
5 Mr. Avery's house or garage. So she's got to
6 feel some pressure. This is the biggest case of
7 her career. The biggest case the Crime Lab has
8 ever had: 380 items, 180, I think, submitted just
9 to her unit.

10 It's almost five months late and nothing
11 has been found. So when she gets this last
12 bullet fragment, she recognizes, I think she
13 said, it's a probative piece of evidence. She
14 knew what it was. And when she gets this
15 contaminated test, the pressure is on for her to
16 go way out on a limb, farther than she's ever
17 gone in her life. Never before has she ever
18 asked to deviate from a protocol to make an
19 inclusion, until this case.

20 Now, she probably convinced herself that
21 it's okay because it's just in the control, who
22 cares. There's no evidence that the bullet is
23 contaminated, right? Well, we talked about that,
24 what controls are, and why they have them, and
25 how you can find contamination in controls very

1 easily, because if a control has anything but
2 zero DNA, it's been contaminated.

3 What you can't tell is when a piece of
4 evidence shows up with someone's DNA, you can't
5 tell whether it's there because it has been
6 contaminated or not. And so what you do is, you
7 run a control. And the protocol says, if that
8 control is contaminated, you toss it out, and
9 that's the end of it. Because they know, from
10 their own tests, that there's cross contamination
11 that can occur from one evidence item to the
12 next. And they can never rule it out if there's
13 a contaminated control.

14 So where is Teresa Halbach's DNA coming
15 from? Ms Culhane says, she's theorizing and she
16 thinks, well, maybe -- maybe I'm talking too much
17 or I'm too close to the bench and that that's how
18 her DNA got on there. But in truth, she doesn't
19 know how her DNA got on there.

20 And what we do know is, that Teresa
21 Halbach's DNA was right there at her bench, right
22 underneath the same bench that she's working on,
23 is her storage area. We talked about the central
24 storage area for evidence. She checked it out in
25 November. She never put it back until mid April,

1 I think it was.

2 And all that while, she's got Teresa
3 Halbach's DNA, from the RAV4, in the cargo area,
4 sitting right there on her bench. That's a bad
5 practice right there. But when you get a
6 contaminated control, you can't tell how and
7 whether Teresa Halbach's DNA ended up there in
8 the same extraction mechanism that she's doing or
9 not. You just can't tell.

10 And their own logs, their own
11 contamination logs that I introduced, talk about
12 how difficult it is. We went through it. I
13 won't go through it again with you. But there
14 are instances in here where it specifically says,
15 evidence from one case has been contaminated into
16 another.

17 And they look and they try and figure
18 out why, corrective measures. And they can't
19 figure it out. They can't figure it out. So how
20 are we supposed to figure it out? How are you
21 supposed to figure it out? You can't. And
22 that's why the protocol says, you toss it out and
23 you do it over.

24 Only she had a problem, because she had
25 used it all up. She took a chance, rather than

1 trying to swab it, to put it in this buffer and
2 dissolve it all. And she had a one shot, one
3 chance with this DNA test. And when it came back
4 contaminated, she was kind of stuck, you know,
5 this was probative.

6 And so she went out on that limb and
7 said, I'm asking for a deviation from the
8 protocol. We're going to call this Teresa
9 Halbach's DNA. And why is that so important?
10 Why -- Why do we know that it's unreliable? What
11 else is there to tell us, maybe, that it's an
12 unreliable conclusion? It's the only place. All
13 these other items, it's the only thing that's
14 ever come up with Teresa Halbach's DNA.

15 You people look a little bit tired,
16 anybody want to stretch for a moment? Would you
17 like to get up and stretch? Is that okay, Judge?

18 THE COURT: That's a good idea.

19 ATTORNEY BUTING: All right. Let me --
20 There's one other area, though, where -- that we
21 have to talk about, that Mr. Avery's DNA is found
22 on. And that's the hood latch. But that's the most
23 easy -- easiest to understand, really, because --
24 First of all, note that it's not found until month's
25 later, which means that it wasn't found in the first

1 sweep of the car that Sherry Culhane does.

2 And who followed Sherry Culhane into
3 that vehicle, who's the next person? The first
4 thing they do is DNA, so that no one is
5 contaminating anything. Next one to come in is
6 Mr. Stahlke, the blood spatter guy.

7 He admits he is leaning in, he's got his
8 hands in there. He's touching. And I think he's
9 even -- I don't remember if he admits actually
10 touching the blood itself, but he's certainly all
11 over the area where it was, with his gloves.

12 And then someone asked him to get the
13 odometer reading. So he turns the key and
14 there's nothing. So he realizes maybe the
15 battery is dead. He comes around to the hood,
16 and he said, he didn't change his gloves. And he
17 opens the hood and, then, of course, sees the
18 battery is disconnected. And they have to do
19 something else to get the odometer reading.

20 But that's -- that's the problem with
21 DNA, it's so easily translated -- or transferred
22 in the environment. That's why you are supposed
23 to peel off your gloves. And he didn't.

24 Let's move on to some of the other
25 aspects of this case that are really peculiar.

1 How about a complete lack of any motive for
2 Mr. Avery to kill Teresa Halbach. Why would he
3 kill Teresa Halbach? It's a man who's wrongly
4 incarcerated, spent years in prison. Gets out,
5 has a good lawsuit pending; he's going to get a
6 whole lot of money, in all likelihood. Why would
7 he kill somebody? That makes no sense.

8 First thing that leaps out at you when
9 you heard about this charge, maybe more peculiar,
10 is why Teresa Halbach? Why kill some woman that
11 just comes over and takes pictures of your car
12 four or five times? Why her?

13 And just quickly, this theory that
14 somehow he was luring her over by using the name
15 B. Janda, is completely bogus, because the very
16 same day, one of the other customers did the same
17 thing. You give the name of the owner. Mr. -- I
18 may have it backwards, Mr. Schmitz, I believe,
19 called for -- Mr. Sippel called and left
20 Mr. Schmitz's name because he's the owner and he
21 was the one who was going to be there when the
22 car was looked at.

23 If he is really going to plan to kill
24 Teresa Halbach, specifically, why not just call
25 her on the cell phone? Why leave a paper trail?

1 Why call the office, you know, leave your
2 address, Avery Road? I mean, hello, Avery Road,
3 doesn't take a rocket scientist to trace it back
4 to him.

5 And where was she killed? In the
6 garage? We still don't know, from the State's
7 theory. But think about this, maybe he's got
8 some explanation he's going to come up with here,
9 but if she's killed in the garage and she's
10 burned in the burn pit, what's she doing in the
11 back of the RAV4?

12 He put's her into the cargo area of the
13 RAV4 so he can drive 20 feet around the other
14 side of the building to take her out and put her
15 into the burn pit? Makes no sense at all. It's
16 another reason to suspect that that burn pit is
17 not the original site of burning, because her
18 body was very clearly inside that rear of that
19 RAV4.

20 Why burn the phone, and the camcorder,
21 and the -- or I'm sorry, the camera, and the palm
22 pilot? Why burn those items in your own burn
23 barrel? You are surrounded by quarries. You are
24 out in a rural area. You have got 4,000 junk
25 cars. You have crushed cars you can put it in.

1 Why do you burn it? What's the point?
2 Get rid of it. It's easy to get rid of. Toss it
3 in one of the ponds. Bury it. No one is going
4 to find pieces of metal. Especially, again, if
5 after November 3rd and 4th, it's obvious, the
6 police are looking at you.

7 Mr. Kratz says, the location of that car
8 tells us it was going to be crushed. And think
9 what would have happened if that car -- if
10 Patricia Sturm had not found that car on Saturday
11 afternoon, that car would have been crushed and
12 we would have lost that evidence forever.

13 Well, ask yourself, why wasn't it
14 crushed, already? You got a crusher, I mean, you
15 got a crusher on your property. You got -- 54
16 cars are crushed there. It's obviously used all
17 the time. Why isn't it already crushed on
18 November 5th, especially if you know the cops are
19 looking at you? Common sense.

20 And why try and build this complicated
21 outdoor fire to get rid of a body, when you have
22 got something like this on your property, that
23 can melt aluminum to liquid. Big enough, easily,
24 to do the job you need, if that's what you are
25 going to do. You would use that. But, of

1 course, that doesn't fit with the State's theory,
2 because if you did use the smelter, you wouldn't
3 move the bones back on your property.

4 All right. Let me talk about the FBI,
5 Dr. LeBeau. I suggest he is not a credible
6 witness. And more importantly, the test, for
7 what it was used, for the opinions that were
8 given, is not credible for that.

9 He gets the award for the most absurd
10 expert opinion of anybody that's come into this
11 courtroom and this trial. When he says, I can
12 conclude to a reasonable degree of scientific
13 evidence, that when I test those three items, and
14 don't find EDTA, these other three items that I
15 never bothered to test, they don't have EDTA
16 either.

17 How can you ever make that kind of
18 conclusion? That tells you how sloppy he is with
19 his opinions, how willing he is to give them what
20 they want.

21 Compare his testimony to Dr. Janine
22 Arvizu, who was forthright, not dogmatic. She
23 gave Mr. -- Dr. LeBeau his due. She agreed with
24 him when he was right and pointed out where he
25 was wrong.

1 She said that this protocol is fine,
2 perhaps, the test, if EDTA is, in fact, present.
3 But to then use it beyond that and say that the
4 absence of it, the absence of EDTA by doing this
5 test proves it's not there, goes too far. It
6 even goes beyond the scope of the protocol
7 itself.

8 Because the protocol says that this
9 procedure allows for the screening and
10 confirmation of EDTA in the suspected bloodstain.
11 Doesn't say that you can then conclude, if you
12 don't get it, that's it's not there. And the
13 reason why is -- it took Dr. Arvizu to figure
14 out, I certainly couldn't -- it's this whole idea
15 of limit of detection.

16 The test that he did, injecting
17 something right into the -- into this instrument,
18 this whatever it was, MS/MS thing, that's easy.
19 I mean, yeah, you are going to get a low -- you
20 know, you are going to be able to get a low limit
21 of detection because it's pure, put right into
22 there.

23 It's the extraction process, where you
24 are taking something out of the fabric or a swab,
25 diluting it, extracting it and going through that

1 whole process of filtering, that it becomes more
2 difficult. Your level of detection is now much
3 higher.

4 In addition, the protocol was rushed.
5 Think about that. Think about how this whole
6 thing came about. The FBI has not tested for
7 EDTA in 10 years, since the O.J. Simpson case.
8 His explanation is, because no one asked. Think
9 about that. Why do you think no one asked?

10 First of all, we can't ask for it, as
11 the defense, the defense bar. Only the
12 prosecution can ask for it. What did they do in
13 that case? They screwed it up. They found EDTA
14 and later argued, whether they were right or
15 wrong, we will never know, later claimed, oh,
16 that was just a carryover from a different
17 sample. Well, the jury was told that there was
18 EDTA in that case, look what happened.

19 What prosecutor is going to trust them
20 to do this same kind of test and not screw up
21 their case? This prosecution team. Because they
22 were desperate to try and do something to
23 discredit the defense of planting, whatever it
24 took.

25 And, so, when it normally takes three to

1 four months to develop one of these protocols,
2 they suddenly come up with one in two weeks. And
3 they are testing it and validating it and
4 actually doing the test samples before, as
5 Dr. Arvizu said, before they even got their
6 results of their own competency tests from this
7 procedure.

8 So why is the FBI involved in this case
9 at all? Again, this shows credibility, a lack of
10 it. They try to say, oh, we're concerned about
11 police misconduct. We want our public officials
12 to be truthful. And if there's some officer who
13 is planting, we want to know about it.

14 Well, I asked them, what investigation
15 did you start? Where is the grand jury? What's
16 the U.S. attorney doing? Is there even any
17 investigator on the case from the whole FBI,
18 that's talked to any witness? No.

19 All they have got is this lab that's
20 asked to do this new protocol and here's what
21 they are told. Purpose of this request is to
22 establish the presence of EDTA in the vial of
23 blood, thereby eliminating the allegation that
24 this vial was used to plant evidence. That's it.
25 It's not to find out whether these cops are

1 corrupt. It's to eliminate the defense. So are
2 we surprised at the results? I'm certainly not.

3 The real reason the FBI got involved in
4 this case is because Mr. Avery had the audacity,
5 and, you know, this is what I'm going to hear,
6 probably, how dare he accuse these fine officers
7 and besmirch their reputations.

8 And when that happens, they circle the
9 wagons. Cops, when they get accused of
10 misconduct, they circle the wagons. That's the
11 code of silence, or that's the bond they have.
12 And that's why Calumet and DCI were so quick to
13 jump on the bandwagon, when Lenk and Colborn were
14 professing they did nothing wrong. They had
15 nothing to do with this. And Lenk and Colborn
16 probably counted on that.

17 Quickly, a couple of other peculiar
18 things about the timeline. The -- Bobby Dassey
19 says that he sees Teresa Halbach at 2:45, he
20 leaves at three, and the vehicle is still there,
21 something like that. He has no good way of
22 verifying the time, but he tells the officer,
23 talk to Scott Tadych -- Tadych, he can tell you
24 precisely, is the word he used, precisely what
25 time it was.

1 Well, how does he know that Tadych can
2 tell precisely what time it was that he
3 supposedly is being seen, unless the two of them
4 maybe got together, talked about a story they had
5 come up with.

6 Remember, those two people, unlike
7 anybody else that was asked about an alibi and
8 maybe weren't, but those two people alibied
9 themselves. Without each other, there is no
10 alibi for either one of them. Nobody sees Dassey
11 go hunting in the woods. Taking a shower, by the
12 way, before he goes off hunting, like his Irish
13 Spring soap is going to help attract deer. Come
14 on.

15 And he goes there so that -- he wants to
16 get there before dusk, because that's when the
17 deer feed. I'm not a hunter, but we know what
18 time he left and came home. It was well before
19 dusk, he is home at 5. That doesn't make sense.

20 More importantly, Lisa Buchner, the
21 school bus driver, is a completely disinterested
22 party and she does have a reason to know the
23 time, precisely, because she has got a regular
24 route that she drives, 3:30 to 3:40 every day.
25 School lets out 3:05. She's drives, drops the

1 people off. She's dropping those Dassey boys off
2 at that time.

3 What does she say? She says she saw a
4 woman taking pictures of a van. Now, how many
5 women are out there taking pictures of a van at
6 that same time period. She's honest and says I
7 don't remember if it was Monday, the 31st,
8 Tuesday, the 1st, or Wednesday, November 2nd.
9 That's what she tells Investigator Wiegert on
10 November 7th, just one week afterwards now, when
11 it's fresh in mind.

12 And she's so concerned about it, she
13 went to the barricades on November 5th and said,
14 hey, I think I saw her. I think I saw her. I
15 don't remember what day but, you know. That's
16 what she describes, this woman taking pictures.
17 The State, 16, 17 months later, is able to
18 confuse her, and say, well, yeah, maybe it was a
19 week earlier, maybe it was a couple weeks
20 earlier, but that's not what she said when it was
21 fresh in her mind.

22 The State will argue that the location
23 wasn't right. She said she saw someone taking --
24 she saw her taking the pictures of something down
25 around the turn around circle. And it's true,

1 that's not where Barb Janda's car was, or this
2 van was. It was up the road a ways. Well,
3 either she's mistaken about that or -- and I
4 submit this is a very real possibility -- she is
5 doing a hustle shot, because she's been flagged
6 down on her way out and asked to take another
7 picture. By who?

8 We know it's happened before. We have
9 evidence. Angela Schuster said, just a few weeks
10 earlier, Tom Janda had flagged her down and taken
11 a hustle shot, on the way out.

12 And John Leurquin, the propane driver,
13 yeah, he's not as certain, but he does
14 corroborate Lisa Buchner in that he sees this
15 green SUV around the same time. He doesn't know
16 who's driving, and maybe it wasn't Teresa Halbach
17 at that point. This person who was hustling a
18 shot perhaps, was driving away with. But he
19 recalled it because it was different, wasn't the
20 usual regular vehicles that he always sees.

21 So when the State tells you that Bobby
22 Dassey is this credible witness, who's the last
23 person to see Teresa Halbach alive, maybe he's
24 right, if he's the killer. Or Scott Tadych, his
25 only alibi. He tells him --

1 ATTORNEY KRATZ: Judge, I'm sorry, I'm
2 going to interpose an objection on third party
3 liability. I would like to be heard.

4 ATTORNEY BUTING: I will rephrase that. I
5 will withdraw that.

6 ATTORNEY KRATZ: I don't want it rephrased,
7 I want to be heard.

8 THE COURT: I'm going to let Mr. Buting
9 finish up, then I will hear your objection.

10 ATTORNEY KRATZ: Thank you, Judge.

11 ATTORNEY BUTING: Police, when they
12 interview Mr. Dassey, just accept his story,
13 unquestioning -- unquestioningly. And they accept
14 Mr. Tadych's story. They don't go check out his
15 alibi for later, where he says he is visiting his
16 mother at the hospital. Well, where is the proof of
17 that?

18 Why do you believe him, especially when
19 he tells you that, when he comes back, he sees
20 this fire, and then he knows what time it is
21 because he leaves around 7:45, he wants to get
22 home so he can watch *Prison Break*. *Prison Break*,
23 at 8:00, in Wisconsin. Did they check that out
24 to see what time it comes on?

25 Do you still want to be heard or?

1 THE COURT: You can continue.

2 ATTORNEY BUTING: All right. I will talk
3 briefly about the other, since Mr. Kratz said that
4 these -- Mr. Fassbender and Wiegert were
5 investigating, parallel, these other suspects,
6 including the boyfriends, ex-boyfriends, whatever,
7 but look at what they did. They admit that, yeah,
8 sure, Mr. Avery may be a suspect or a person of
9 interest because we know he was one of the people
10 who saw her on the last day.

11 But who else saw her on the last day,
12 George Zipperer, and look how he behaved. Mr.
13 Avery says, come on in, very cooperative.
14 Zipperer is belligerent. But we didn't know
15 that.

16 Hillegas, former boyfriend, no alibi,
17 didn't even ask him.

18 Male roommate, Mr. Bloedorn, who doesn't
19 report her missing for four days. What's up with
20 that? Don't ask him for an alibi. Where was he?

21 Bradley Czech, male friend with a little
22 bit more personal relationship with her, perhaps.
23 Again, no alibis checked.

24 Mr. Pearce, an employer who never
25 bothers to report her missing, for four days.

1 All of these roles that these people
2 play, the officers admitted would normally, in a
3 normal missing person or homicide investigation,
4 be considered possible suspects that you would at
5 least look at and check out, but not here.

6 And what about all the other people on
7 the Avery property on October 31st? What's up
8 with that? Where are their alibis? Customers
9 and other people who work and live there.

10 And, interestingly, going quickly back
11 to this hustle shot for a minute, I asked, you
12 know, you think maybe -- well, of course, if she
13 was flagged down, there wouldn't be any record in
14 her palm pilot.

15 But if it was a different kind of hustle
16 shot that she was on her way to go do, the FBI
17 technician, or whatever, that came here and
18 talked about the electronics, said that he might
19 have been able to recover that kind of data from
20 the palm pilot, but wasn't asked to. They were
21 concerned about him trying to prove that it was
22 Teresa Halbach's palm pilot, not what was on it.

23 And, then, there's what I consider the
24 mysterious part of Teresa Halbach's life. And I
25 mean no disrespect to the Halbach's family,

1 whatsoever, when I say this. But Teresa had her
2 own private life. We know that. She had at
3 least three circles of friends, I think it was
4 described: Her family, people that she worked
5 with in the community, marketing and whatnot, and
6 the Green Bay friends.

7 And apparently they didn't intersect
8 very much. Because she's missing for four days
9 before anyone reports it. And maybe most
10 interestingly is, we know that on Saturday night
11 she was out, with somebody, or she was -- I can't
12 say she was out with somebody, but we know that
13 she went out, some Halloween party somewhere,
14 bar, wherever, in Green Bay area is what
15 Mr. Hillegas, I think, said he thought, or maybe
16 Mike Halbach.

17 And yet, despite all those fliers that
18 were sent around, all over the state, thousands
19 of them, not one person has come forward to say I
20 was with her Saturday night. Something is weird
21 about that. Especially when you combine it -- I
22 believe Mr. Pearce, I may be misquoting him, but
23 I believe he, at one point, had some thought that
24 maybe she had met somebody on the weekend and
25 that's where she was and why she wasn't showing

1 up.

2 But then we have the weird thing about
3 the voice mail. Why did the police not follow up
4 on this. We were not confused about these
5 records, but I'm glad that Mr. Zimmerman was able
6 to enlighten us, that the messages that are on
7 this exhibit, 372, 18 of them, would not
8 constitute a full mailbox. He said that very
9 clearly.

10 And what he said was, when I asked him
11 if this -- if this persons account was sending
12 out a message when you called, that said mailbox
13 is full, would something more have to be on it
14 than what's on these records. And he said, yes.
15 And he said that, yes, that meant something had
16 to have been erased. Something on her voice mail
17 was erased by somebody.

18 And to do that, you would have to have
19 her password. And I'm not at all accusing the
20 Halbachs of that. But somebody else close, that
21 had her password, and for some reason thought it
22 necessary to erase a message. What was so
23 important on her voice mail, or perhaps so
24 incriminating on her voice mail, that would
25 necessitate somebody, close enough to her that

1 has her password, erasing one or more messages.

2 These are all reasonable doubts, ladies
3 and gentlemen. These are all questions that
4 police and law enforcement ignored, because it
5 points away from Steven Avery, who wouldn't have
6 had her password and points to someone else.

7 Mr. Strang will finish up and give you a
8 little bigger picture in a moment, but I'm
9 confident that you are going to find more than
10 reasonable doubt and find Mr. Avery not guilty.
11 Thank you.

12 THE COURT: All right. Members of the
13 jury, we're going to take a break at this time. I'm
14 going to talk to the attorneys about scheduling.
15 Again, do not discuss this matter during the break.
16 We'll call you back shortly.

17 (Jury not present.)

18 THE COURT: You may be seated. First of
19 all, Mr. Kratz, I will hear your objection at this
20 time.

21 ATTORNEY KRATZ: Thank you, Judge. This
22 Court has entered numerous pre-trial rulings for
23 which Mr. Buting was a party. One of those
24 pre-trial rulings prohibited any reference to a
25 possible third party, that is, a killer, other than